

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





DOCKET NO.

# 76-1076

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P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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United States of America,

Plaintiff-Appellee,

v.

Carlos Cuadrado, Robert Munoz, James Sims,

Defendants-Appellants.  
-----

DEFENDANT-APPELLANT CUADRADO'S APPENDIX

Respectfully submitted,

MANUEL NELSON ZAPATA  
Attorney for Defendant-  
Appellant Cuadrado  
277 Broadway  
New York, New York 10007

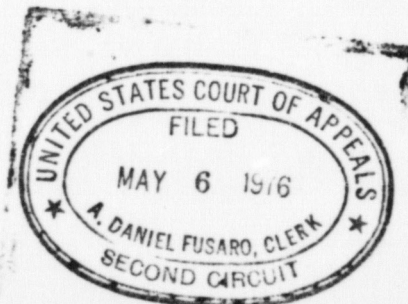
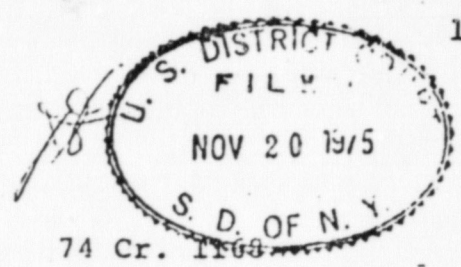


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UNITED STATES OF AMERICA  
v.

CARLOS CUADRADO

Before: HON. CONSTANCE BAKER MOTLEY,  
District Judge.

New York, New York - January 17, 1975, 9:30 a.m.

For the Government: KENNETH FEINBERG, Esq.  
For the Defendant: NELSON ZAPATA, Esq.

- - -

(Case called)

MR. FEINBERG: The Government is ready.

MR. ZAPATA: The defendants is ready.

Your Honor, this defendant wishes permission  
to withdraw the plea of not guilty previously entered to  
this indictment, 74 Criminal 1168, and offers to plead  
guilty to the crime of conspiracy contained in Count 1 of  
that indictment in satisfaction of the whole indictment.

BY THE COURT:

Q Mr. Cuadrado, is this your signature on the petition

1                    elmech                    Cuadrado

2                    to plead guilty?

3                    A        Yes, it's my signature.

4                    THE COURT:   And, Mr. Zapata, is this your signature  
5                    on the certificate of counsel?

6                    MR. ZAPATA:   It is, your Honor.

7                    THE COURT:   The clerk is directed to file this  
8                    petition to plead guilty.

9                    Q        Mr. Cuadrado, do you wish to withdraw at this  
10                    time your previously entered plea of not guilty to Count 1  
11                    of this indictment and plead guilty at this time?

12                    A        Yes, your Honor.

13                    Q        How old are you, Mr. Cuadrado?

14                    A        Fifty-three years old.

15                    Q        How much education have you had?

16                    A        I am a graduate from eighth grade and I have in  
17                    the practice education about three years -- about two years  
18                    of college.

19                    Q        Where did you attend school?

20                    A        In Puerto Rico.

21                    Q        So you have an eighth grade education and, in  
22                    addition, three years beyond that?

23                    A        Yes.

24                    Q        Have you discussed this case with your attorney,  
25                    Mr. Zapata?



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A Yes, I did.

Q And have you given him all the facts concerning this charge against you?

A I did.

Q Have you discussed with Mr. Zapata any defense that you might have to this charge?

A No.

Q Do you understand that when a person is charged with a crime he may offer a defense?

A Yes, I understand that.

Q My question is, have you discussed with your lawyer any possible defense you may have to this charge?

A Yes, I discussed prior to that. But then I felt --

Q Just answer yes or no.

A Yes.

Q You have; all right.

Are you satisfied that your attorney has fully considered all the facts in your case and any possible defense you might have?

A Yes.

Q Did he read this charge to you?

A Yes, he did.

Q Did you read it?

A Yes, I read it.

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Q That is Count 1?

A Yes, I read it.

Q Do you waive a detailed reading of this charge against you at this time?

A Yes, I do.

Q Tell me in your own words what you understand you have been charged with.

A I have been charged to conspire with other persons to putting bombs and extortion and all those things they say that indict me.

Q Do you understand that by pleading guilty to this charge the Court might sentence you to a term of imprisonment up to five years?

A I understand that, your Honor.

Q And in addition may impose a fine up to \$10,000?

A I understand that, your Honor.

Q Do you understand that?

A I do understand it.

Q Do you understand that by pleading guilty to this charge you give up your right to be tried by twelve citizens from this district?

A Yes, I do.

Q All of whom must be convinced of your guilt beyond a reasonable doubt before you could be found guilty?



A Yes.

Q And that if you went to trial you would have the right to a speedy and public trial?

A I understand that.

Q And that you would not have to say anything, that the Government would have the burden of proving your guilt beyond a reasonable doubt?

A I understand that.

Q Do you understand that if you went to trial you would have the right to call witnesses in your own behalf?

A I do understand that, your Honor.

Q And cross-examine the Government's witnesses against you?

A I do understand that, too.

Q And understanding all those rights you now want to waive them and plead guilty?

A I plead guilty, your Honor.

Q I am asking you if you understand you have a right to a trial.

A I do understand that I have a right to a trial.

Q And you want to give up your right to a trial and plead guilty; is that it?

A Yes.

Q Do you feel that any of your Constitutional rights

1  
2 have been violated in any way in connection with your  
3 property, your arrest, or these proceedings against you?

4 A I don't think so.

5 Q Was any of your property seized when you were  
6 arrested?

7 A No.

8 Q Were you arrested in connection with this charge?

9 A Yes.

10 Q Are you pleading guilty because of some statement  
11 or confession you may have made at the time you were  
12 arrested or since that time to the United States Attorney?

13 A I wasn't arrested in this case.

14 Q You weren't arrested?

15 A If I remember, I wasn't arrested. I came by --

16 Q Did you make any statement to the United States  
17 Attorney regarding this case after you were indicted?

18 A Yes, I did.

19 Q Before you made that statement were you advised  
20 of your Constitutional rights?

21 A Yes, my lawyer was present at that time.

22 Q Pardon me?

23 A My attorney was present at that time.

24 Q Let me ask you this: Were you threatened in any  
25 way to get you to make the statement?



1  
2 A No.

3 Q Were you promised anything?

4 A No.

5 Q Are you satisfied that any statement you did  
6 make was freely and voluntarily made?

7 A It was freely and voluntarily made.

8 Q Has anyone now, including your own attorney or  
9 the United States Attorney, made any promises to you that  
10 you would be dealt with leniently by the Court if you  
11 would plead guilty at this time?

12 A No.

13 Q Has anyone made any other promises to you?

14 A No.

15 Q Regarding your plea of guilty?

16 A No.

17 THE COURT: Do you know of any promises to the  
18 defendant, Mr. Zapata?

19 MR. ZAPATA: May I have a second, your Honor?

20 THE COURT: Yes.

21 (Pause)

22 MR. ZAPATA: Something has been said, your Honor,  
23 to the defendant and myself by the Assistant District  
24 Attorney, Mr. Feinberg, that he will at the time of sentence  
25 speak on behalf of the defendant for cooperation given by

the defendant to the Government. Beyond that, there were no promises.

MR. FEINBERG: That's correct, your Honor.

Q Do you understand that, Mr. Cuadrado?

A Yes, I do.

Q Has anyone threatened you in any way to get you to plead guilty at this time?

A No.

Q Are you under the influence of any drug or alcohol at this time?

A No.

Q Have you ever been the subject of any psychiatric care or treatment?

A No.

Q Do you feel that you have understood everything which has transpired here today and that you are competent to make this decision to plead guilty?

A I do.

Q Is this your decision to plead guilty?

A It's my decision, yes.

Q Are you entering this plea freely and voluntarily and as a result of your own reasoning processes?

A Yes, I am.

Q Tell me what you did from on or about November



1972 up to and including the date of the filing of the indictment, which was December 11, 1974, here in the Southern District of New York, which shows that you are in fact guilty of conspiring with others to extort money from contractors.

A Actually, we had meetings -- this is an organization we had meetings in this area, there were discussions in those meetings regarding how to go about to do these things to obtain this money. I have signed checks for monies paid to other persons; even though I never went to put any bomb on this place, I counsel, we talk, we argue regarding these bombs, and this is why I felt that I am guilty of conspiracy. It's the only reason I felt that, because I conspire, I work with them, the other persons involved in this case, and we talk about it.

Q And you agreed with them to use bombs to extort money; is that it?

A Yes, I agree, but I never went to the place.

Q That is what I am asking you. You are charged with agreeing at this point.

A That is what it is; I agreed.

Q Do you have any questions you would like to ask your attorney or the Court at this time before I finally accept the plea of guilty?

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Cuadrado

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2 A No questions.

3 THE COURT: Have we set a date for trial in this  
4 case?

5 MR. FEINBERG: May 19th, your Honor.

6 THE COURT: Do you expect that the defendant  
7 will be testifying?

8 MR. FEINBERG: I do, your Honor.

9 THE COURT: Shall I put the sentence over until  
10 then?

11 MR. FEINBERG: Please.

12 THE COURT: Is that agreeable with you?

13 MR. ZAPATA: It is, your Honor.

14 THE COURT: We will make it Monday, June 9th at  
15 11:00 o'clock. Presentence report will be required.

16 The Court accepts the plea of the defendant.  
17 Carlos Cuadrado to Count 1 of Indictment 74 Criminal 1168.

18 MR. ZAPATA: Your Honor, may I make an application  
19 in connection with the bail? This defendant has a \$1,000  
20 cash bail posted and he is in dire need of this money. He  
21 has faithfully appeared in court voluntarily, he was never  
22 arrested, and cooperated fully all the times that he has  
23 been required to appear to speak to the Assistant District  
24 Attorney or to appear before the Court, so I would ask your  
25 Honor to fix a \$1,000 personal recognizance bond unsecured,



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and exonerate the bail that is posted now.

MR. FEINBERG: The Government agrees and has no objection.

THE COURT: All right. That will be so ordered.

MR. ZAPATA: Thank you, your Honor.

MR. FEINBERG: Thank you, your Honor.

- - -

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

*Eugene R. Lewis*

Official Court Reporter  
U. S. District Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

Indictment # 74 Cr.1010

-v-  
ROBERT MUNOZ, JOHN SIMS,  
JAMES SIMS, FRANK SIMS, CARLOS  
CUADRADO, CLEO WILLIAMS, a/k/a  
Brother Black, a/k/a Cleo Black,  
and WARNELL VEGA, a/k/a "Skip"  
Vega, EDDIE JACKSON, PRUTO ALICEA,

Defendants.

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S I R:

PLEASE TAKE NOTICE that upon the annexed affidavit of MANUEL NELSON ZAPATA, attorney for the Defendant CARLOS CUADRADO, duly sworn to the 2nd day of January, 1976, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court before Hon. Constance B. Motley on the 16<sup>TH</sup> day of January, 1976, at the Courthouse, Foley Square, New York, at 10 o'clock in the forenoon of that day, or as counsel can be heard, for an order to have the Hon. Constance B. Motley voluntarily disqualify herself from sitting on further proceedings involving Defendant CARLOS CUADRADO and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
January 2, 1976

Yours, etc.

MANUEL NELSON ZAPATA  
Attorney for Defendant  
277 Broadway  
New York, New York 10007

TO: Thomas J. Cahill  
U.S. Attorney for  
the Southern District  
Foley Square  
New York, New York



## 13

Indictment # 74 Cr.1010

-v-

Defendants.

4. The Defendant CUADRADO has fully cooperated with

the government in the prosecution of this case. He testified before the grand jury on October 10, 1974 and has willingly and voluntarily given information to the U.S. Attorney handling this matter. He has also testified in the trial of this indictment at which the Hon. Constance B. Motley presided as the trial judge.

5. The Court in its charge to the jury characterized the testimony of the defendant Cuadrado as follows:

In my view, the testimony of the witness Carlos Cuadrado is completely incredible, that is, unbelievable, and should not be accorded any weight; but, as I noted before, you are not bound to accept my view of his testimony and must arrive at your own decision as to whether his testimony is to be accorded any weight and whether you believe his testimony or not. (page 6400 of trial transcript hereto annexed as an exhibit.)

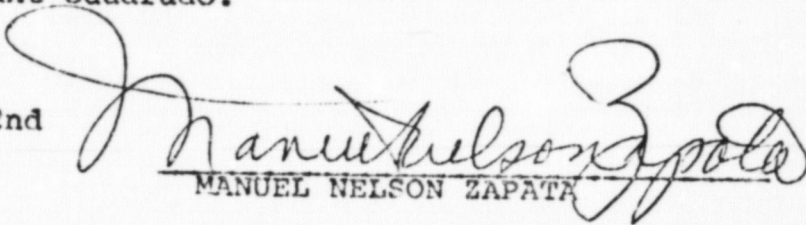
6. It is respectfully suggested to this Court that the above statement indicates bias and prejudice toward the Defendant Cuadrado and would make it exceedingly difficult for this court to sit as a fair and just tribunal in any further proceedings involving this Defendant. The interests of justice seem to require the voluntary withdrawal of this Court in order that both the reality and appearance of justice and impartiality can be preserved. It is vital to the continued viability of our democratic system that that the court system not only be fair but it must also appear to be fair.

7. It is respectfully suggested to this Court that it voluntarily withdraw from further proceedings with respect to the Defendant Cuadrado to avoid the appearance of a possibility of personal bias and prejudice to him.



WHEREFORE, it is respectfully requested that this Court voluntarily withdraw from further proceedings in the case involving the Defendant Cuadrado.

Duly sworn to: the 2nd  
day of January, 1976

  
MANUEL NELSON ZAPATA

MELVIN E. ROSENTHAL  
Notary Public, State of New York  
No. 30-6659331  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires March 30, 1977

committed perjury, as he understands it, when testifying as to these matters.

If you believe a witness has been impeached and discredited, you may give the testimony of that witness such credibility or no credibility as you see fit.

In my view, the testimony of the witness Carlos Cuadrado is completely incredible, that is, unbelievable, and should not be accorded any weight; but, as I noted before, you are not bound to accept my view of his testimony and must arrive at your own decision as to whether his testimony is to be accorded any weight and whether you believe his testimony or not.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised and no inference of any kind may be drawn, from the failure of a defendant to testify.

However, a defendant who wishes to testify may do so and is a competent witness. The defendant's testimony is to be judged in the same way as that of any other witness.

Some defendants have not taken the stand. The fact that a defendant, who has a right so to do, has not taken the stand and testified in this case does not create any presumption against him and cannot be considered by you

1 UNITED STATES DISTRICT COURT

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2 SOUTHERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA :

5 vs. :

74 Cr. 1168 (CBM)

6 CARLOS CUADRADO, :

Sentence

7 Defendant :

8 - - - - - X

9 Before:

10 Hon. Constance Baker Motley,

11 District Judge

12 New York, N. Y.

13 January 23, 1976 - 11 A. M.

14  
15 APPEARANCES.

16 Thomas J. Cahill, Esq.,  
17 United States Attorney  
18 For the Government  
19 By: Jeffrey Harris, Esq.,  
20 Assistant United States Attorney

21 Manuel Nelson Zapata, Esq.,  
22 Attorney for Defendant  
23  
24  
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Cuadrado

THE CLERK: The United States versus Cuadrado.

MR. HARRIS: Government ready.

MR. ZAPATA: Ready.

THE COURT: Mr. Zapata, at this time the Court will give you an opportunity to say anything you wish on behalf of the defendant Carlos Cuadrado, after which the Court will address the defendant separately.

MR. ZAPATA: Thank you.

Your Honor, first I want to explain why the sentence memorandum which I sent you is inaccurate, incomplete as to the prior criminal record of this defendant.

THE COURT: Do you have that down here, Mr. Clerk?

MR. ZAPATA: I have a copy, if you need one.

THE COURT: Yes. Would you hand it up?

MR. ZAPATA: Sure (handing).

I asked the defendant to write down the history of his criminal record, and he did. Mr. Rosenthal of my office spoke to him. Then, that same day, the memorandum was prepared and mailed. Then Mr. Cuadrado called Mr. Rosenthal and told him that the defendant had been convicted as a youth of other crimes in Puerto Rico.

Mr. Rosenthal did not communicate this to me until last night. Otherwise I would have written a letter

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to supplement the memorandum, your Honor, and there was no

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intention on the part of anyone to mislead the Court or to

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conceal anything that this defendant has committed.

5

Your Honor is, I am sure, as familiar with this

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case as anyone could humanly be. You've heard this defend-

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ant testify in this case; you have a probation report, which

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should clearly show the defendant's background and the

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facts of his case.

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Just to emphasize, this defendant from the

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beginning decided to cooperate with the Government, the

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prosecution in this case, and in my opinion, at least when

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I was present, he spoke to Mr. Feinberg, who was then the

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Assistant U. S. Attorney in charge of the matter, and the

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defendant spoke frankly at that time. This is my opinion;

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I could be wrong, but Mr. Feinberg was satisfied that the

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defendant had spoken openly and frankly to him.

18

Then the defendant went to the grand jury and

19

Mr. Feinberg explained to me that the defendant had given

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critical testimony that had opened leads, etc., that helped

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in the prosecution of the case.

22

Your Honor heard the testimony of this defendant

23

in court and had assessed him, and I would not have any

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quarrel with that because I wasn't here and obviously you

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are in a better position than I am to evaluate such testimony.



Now, one thing is clear: that this defendant while out on bail has continued to work and support his family, his child with a lady who is his common law wife and, I understand, I've been informed, the children that she had by a previous marriage.

He is fully aware, and so am I, that your Honor could impose anywhere from one day to five years imprisonment on him, and I in no way intend to minimize the seriousness of his acts, but I would say that if this man is incarcerated, the greater punishment will not go to him but will go to his wife and child and her children.

They will end up, without any question, as charges of the City of New York. They will have to be supported by society through its system called social welfare, be stigmatized, perhaps be ashamed later when they grow up and learn that not only did the father go to jail but that they had to go on welfare.

Now, I ask your Honor to weigh the damage that will be done to this woman and her children against the good it would do to put Mr. Cuadrado in jail. Undoubtedly some good would be done by incarcerating a man, as an element of deterrence against others and a deterrence against this individual, but it seems to me that without trying to embellish his life, because it is not a pretty one,

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Cuadrado

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but who am I to judge him? I also live in a glass house,  
as most of us.

He works. He is an industrious individual.  
He has some good in him. If he were thoroughly rotten,  
obviously he would not support a wife and child and would  
not work, especially the work that he does. He helps  
others who are even more unfortunate, less fortunate than  
he is, people who have been drug addicts who are trying to  
find a direction in life.

As your Honor knows, he is working with an  
organization that has done a magnificent job in the Bronx  
in rehabilitating people who are ready to be buried alive  
spiritually. So that in that regard he also shows a  
desire to help others and shows that there is some good in  
this individual.

I trust that your Honor will give this individ-  
ual an opportunity. If your Honor were to place him on  
probation and impose the maximum sentence on him, that would  
be hanging over him to an extent that, if he failed in any  
way to comply with the terms of probation, he would be  
brought back here and be sent away for that period of time,  
and I don't think anybody would have any quarrel with that.  
I would not and I don't think this defendant would, because  
to some extent he is a reasonable individual.



I ask for leniency on his behalf, your Honor.

THE COURT: Does the Government have anything to say?

MR. HARRIS: Your Honor, Mr. Cuadrado agreed to cooperate with the Government and testify at trial, and he did so testify. It was a long trial and your Honor heard his testimony and can weigh its impact with regard to the entire case and where it fits in, and whatever assessment is possible to make of it your Honor is in a position to make, having seen and heard it.

THE COURT: Mr. Cuadrado, you are now before the Court for sentence, having been convicted on your plea of guilty to Count One of Indictment 74 Crim. 1168, which charged you with a violation of Title 18, United States Code, Section 371.

Now, for this offense the law provides a term of imprisonment of up to five years and/or a fine of up to \$10,000.

Do you wish to make a statement in your own behalf at this time or to say anything as to why these maximum penalties provided by the law should not be imposed in your case?

THE DEFENDANT: Yes, your Honor. Your Honor, as I recall, I born poor. My father died when I was eight,



1 and at the age of ten I started selling newspaper to support  
2 my mother. At the age of thirteen I started joining other  
3 boys, other people. I became what you call, what anybody  
4 call, a trash. I commit a whole lot of crimes and a whole  
5 lot of bag things in my life.  
6

7 Today I am old. I have three kids. Two are  
8 not mine. One is mine. That's the only child I ever had.  
9 I work to support her, support my kids. They are in  
10 school. They call me father. I feel proud of that.

11 I know that in 1969 I did commit a crime. I  
12 was placed on probation, which I did, working and supporting.  
13 When I was on probation, I decided to help the less fortun-  
14 ate that come from prison, and I started to get a job for  
15 people who were on parole, probation.

16 I place around a hundred of those people in  
17 meaningful jobs, which today most of them are working.

18 In November, 1974 I was laid off from my job.  
19 I was wondering where I could work. I went to a construc-  
20 tion site and I worked for two weeks. I came back. Mr.  
21 Munoz offered me a job for \$8,000, which I turned down three  
22 times. But I didn't had no money, nothing to support my  
23 wife or my kids. I decided to take it.

24 Since that time I've been working in there and  
25 I have placed about 198 drug addicts who have committed

1 offenses, crimes, who are on parole, on probation. They  
2 reside there. I've sent them, counseled them. They have  
3 been going to high school. Some of them, they are still  
4 going to college and working.  
5

6 I know I did bag, but now I'm trying to do my  
7 best and help somebody else. If I go to jail, as a man,  
8 if I commit offense, I can be punished for that. But how  
9 about her and my kids? Those are the ones which I care  
10 for a whole lot. Those are the ones who can make me think  
11 twice before I can put my feet against the law again.

12 That's the only thing I have to say, your Honor.

13 MR. HARRIS: Your Honor, just one thing. We  
14 have not been provided with a copy of Mr. Zapata's memoran-  
15 dum. So our silence with regard to it doesn't indicate  
16 agreement with anything in there since we haven't seen it.

17 THE COURT: Well, with respect to that, as Mr.  
18 Zapata has pointed out, that memorandum misrepresents the  
19 facts with respect to Mr. Cuadrado's prior criminal record.  
20 It points out that the defendant has three previous convic-  
21 tions, all involving possession of a weapon.

22 It says that in 1969, in the Bronx Supreme  
23 Court he pleaded guilty to possession of a weapon as a  
24 felony and was placed on probation for five years. That  
25 was the incident that he testified to, I believe, in the



trial of this case, involving a police officer's attempt to arrest him and the weapon he had in his possession went off.

Then the presentence report says in 1948, in Rio Pedros, Puerto Rico, he pleaded guilty to a violation of the Sullivan law and attempted murder and was sentenced to four years imprisonment and to one to ten years imprisonment, whereas the facts are that Mr. Cuadrado has an extensive criminal record, going back to 1940, most of which were minor offenses, apparently in Puerto Rico, such as breach of the peace, gambling, assault and battery.

But he also has other convictions for carrying a weapon, one in May of '41 for which he received 45 days, one for aggravated assault and battery in '41, for which he received ninety days, another for carrying of a weapon in '43, one month; carrying a weapon in '44, one month.

He was convicted of sodomy and rape and sentenced to prison in 1948 for one to ten years -- excuse me, that was June of '49; another carrying a weapon in '48, three months; he was sentenced in 1952, apparently, to one to ten years for attempt to kill, carrying a weapon, an unregistered firearm.

Mr. Cuadrado, did you serve a term for attempting to kill of one to two years in 1952?

THE DEFENDANT: Yes.

1 THE COURT: One to ten years? That was in  
2 addition to the one to ten years you received for rape and  
3 sodomy in 1949?

4 THE DEFENDANT: Those sentences run concurrently,  
5 your Honor.

6 THE COURT: The ran concurrently?

7 THE DEFENDANT: Those sentences were run con-  
8 currently.

9 THE COURT: How much time did you actually  
10 serve in prison?

11 THE DEFENDANT: I served four years in Atlanta.  
12 I came back from Atlanta and I served six years -- four more  
13 years in Puerto Rico. I served eight years all together.

14 I came on parole from Puerto Rico to New York,  
15 and since I came here I've been working, until 1969, that I  
16 have that case in the Bronx -- since that time I've been  
17 working -- and this case here, your Honor.

18 THE COURT: And, of course, that involved another  
19 gun charge, didn't it, in the Bronx?

20 Apparently, at the time of the trial, Mr. Harris,  
21 the Government didn't have this information about his prior  
22 convictions. They run on for two pages here, or three  
23 pages.

24 MR. HARRIS: That's correct, your Honor. The  
25



information we had, which was turned over to defense counsel, was Mr. Cuadrado's: BI, which is known as his rap sheet, his prior record, and I don't have in front of me, but it certainly did not indicate some of what your Honor has recited today.

THE COURT: Well, as I've said, the majority are for minor crimes, apparently, for which he received small fines. But he does have a couple of major convictions that he has just attested to, two ten year sentences, one to ten anyway.

In addition to the sentence in the Bronx, he apparently was placed on probation in the Bronx, because they didn't have all this about your background, did they, Mr. Cuadrado, at the time of your sentence in the Bronx and placed on probation? Did the Judge have all these convictions before him at that time?

THE DEFENDANT: I think he did.

THE COURT: You think he did?

THE DEFENDANT: I think they have. The probation officer told me at that time that they my record.

THE COURT: That was in 1969 in the Bronx. You were sentenced on May 5, 1970 to five years probation. It is your statement that they had these charges from Puerto Rico?

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2 THE DEFENDANT: That's what the probation say.  
3 I think they send -- I don't know if they had them or not,  
4 your Honor.

5 THE COURT: You don't know, is that it?

6 THE DEFENDANT: I'm not too sure if they had.  
7 But, as far as I say, my attorney Oscar Gonzalez Suarez, at  
8 that time he explained it to me that they have my record,  
9 they send for it in Puerto Rico, and they had it. And my  
10 probation told me so, too.

11 THE COURT: Prior to your sentence in the Bronx  
12 of five years probation for possession of a weapon, you had  
13 five prior convictions for possession of a weapon, isn't that  
14 so?

15 THE DEFENDANT: Yes.

16 THE COURT: At least five.

17 THE DEFENDANT: In puerto Rico, a little blade  
18 that you shave, they call at that time -- they can try you  
19 for transporting a weapon, in Puerto Rico at that time,  
20 your Honor, a small blade, something like that, your Honor.

21 THE COURT: Well, it is referred to here as  
22 carrying a deadly weapon. You say that was a small blade,  
23 not a gun?

24 THE DEFENDANT: I was sentenced for a gun a  
25 few times.



1  
2 THE COURT: And, of course, during the trial  
3 you testified for the Government, and you recall that I  
4 suggested to the jury that in my view your testimony was not  
5 believable. Do you recall that?

6 THE DEFENDANT: Yes. Mr. Zapata explained that  
7 to me about a week ago, that he called me to his office.

8 Am I right?

9 MR. ZAPATA: Yes.

10 THE COURT: And I see that the U. S. Attorney,  
11 Mr. Harris, according to the probation officer, characterized  
12 your cooperation on the stand as ludicrous.

13 MR. HARRIS: That is inaccurate, your Honor.  
14 I believe that I never said that.

15 THE COURT: On page 10 of the probation report  
16 the Probation Officer says the following: "Assistant  
17 United States Attorney Jeffrey Harris, Southern District of  
18 New York, indicated that the defendant's cooperation on the  
19 stand was ludicrous."

20 I guess you didn't use those words as indicated.

21 "He felt that his cooperation was a sham and  
22 that Cuadrado, a friend of Robert Munoz, tailored his testi-  
23 mony accordingly."

24 Did you say that in substance to the Probation  
25 Officer?

2 MR. HARRIS: Your Honor, with respect to Munoz,  
3 I said words to that effect, mainly to the effect that  
4 based on his friendship with Munoz and based on the other  
5 evidence the Government had, that with regard to his state-  
6 ments that Munoz had no knowledge of any of these acts,  
7 bombings or was privy to any discussions, I did feel that  
8 that testimony was a sham, yes. I did say that.

9 THE COURT: All right.

10 It is the judgment of the Court that the  
11 defendant be sentenced to a term of five years. That is  
12 in view of your extensive criminal record, Mr. Cuadrado.  
13 And, as far as the cooperation with the Government, we've  
14 just gone over that.

15 So that the Court can't agree that you gave  
16 any cooperation to the Government that was worth anything  
17 in this case.

18 It also appears, as I indicated, that you were  
19 given a suspended sentence in the Bronx without that Court  
20 having the benefit of your extensive criminal record in  
21 Puerto Rico.

22 MR. ZAPATA: Your Honor, may I speak on that?

23 I was not his attorney at the time, but I'm  
24 familiar with cases in the Bronx and in the whole City of  
25 New York. I've represented many clients in the Bronx who



1 took a plea and were convicted.

2  
3 The Probation Department gets records regularly  
4 from Puerto Rico. They either get them through the FBI or  
5 they write directly to the Department of Justice in Puerto  
6 Rico and get them.

7 In all likelihood they did have this record.  
8 You would have to go into the actual background of the case  
9 to see why the District Attorney felt and the Court felt  
10 that this was a proper sentence. This is what I think  
11 happened in this case, that there were mitigating circum-  
12 stances.

13 THE COURT: I don't know what happened, but it  
14 just impressed me that the Court probably didn't have that,  
15 because the presentence report reiterates the fact that  
16 these Puerto Rican convictions did not appear on his FBI  
17 rap sheet, as it is called.

18 So the chances are they didn't have that in the  
19 Bronx when he was sentenced in 1970. The Probation Officer  
20 and the Government here has said that they didn't have it  
21 -- is that so? -- when he testified for the Government?

22 MR. HARRIS: That is so, your Honor.

23 MR. ZAPATA: I have had many defendants who  
24 took pleas in the Bronx or were convicted whose records  
25 were incomplete, and they obtained --

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2 THE COURT: But aside from that, the defendant  
3 is sentenced to five years because, as I've indicated, he  
4 has an extensive criminal record which involves carrying a  
5 weapon. He has admitted to carrying a gun in addition to  
6 a knife, and he was previously convicted in the Bronx of  
7 having a gun which went off in a struggle, and he has served  
8 time before for major crimes.

9 His cooperation with the Government was nil in  
10 this case and --

11 MR. ZAPATA: I take issue with that, your Honor.  
12 And the Government should have stated frankly and candidly  
13 the cooperation the Government had. Mr. Feinberg made a  
14 commitment and this man went before the grand jury and  
15 opened himself completely and this should have been stated  
16 without any equivocation. Your Honor should know that.

17 Now, what happened in the courtroom is something  
18 else. But this man cooperated. Mr. Feinberg told me that  
19 this man had given him information that without which he  
20 could not build this case the way they did.

21 Now the Government has made a statement which  
22 is not candid and is equivocating. In fairness to this  
23 man, especially the Government of the United States should  
24 stand up to its commitment.

25 I don't think that we can have a proper adminis-



1  
2 tration of justice, respect for the law if the Government  
3 itself doesn't stand up and do what it is supposed to do.

4 THE COURT: Are there open counts, Mr. Harris?

5 MR. HARRIS: Yes, your Honor. The Government  
6 has no objection to dismissal of the open counts.

7 THE COURT: All right. Do you want to move to  
8 dismiss the open counts?

9 MR. ZAPATA: I so move, your Honor.

10 THE COURT: All right. The defendant is  
11 remanded.

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